

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )	
Implementation of Section 621(a)(1) of )	
the Cable Communications Policy Act of 1984 )	MB Docket No. 05-
311	
as amended by the Cable Television Consumer )	
Protection and Competition Act of 1992 )	

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**COMMENTS OF CITY OF MONTROSE COLORADO**

These Comments are filed by City of Montrose in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Montrose believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a Permit. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance that operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

City of Montrose is a Colorado Home Rule Municipal Corporation with a population of fourteen thousand. Our franchised cable provider is Bresnan Communications, LLC. Our community has negotiated cable franchises since January 26, 1965.

**Our Current Franchise**

Our current franchise began on July 20, 2000 and expires on July 20, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of three percent (3%) of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one (1) channel (or capacity) devoted to educational and to government access.

Our franchise contains the following requirements regarding emergency alerts:

#### **9-9-15: LOCAL ACCESS**

(A) The City, or other governmental entity which has jurisdiction within the City and which performs emergency response, shall be authorized to make emergency use of the Company's system and the Company shall install a capability for emergency messages to be transmitted on all channels simultaneously. (Ord. 1707, 6-17-99)

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

#### **9-9-14: MINIMUM SERVICE AND OPERATION REQUIREMENTS**

(A) The company shall maintain a local business office within the City open at least eight (8) hours a day, five (5) days per week. Complaints from consumers shall be responded to promptly and courteously by the company and a log listing all complaints, service requests and their disposition shall be kept by the company available for inspection by the City.

(D) The system shall be designed to provide subscribers with a uniform high quality of reception throughout the City and shall be operated continuously. The system shall have a minimum capability of not fewer than twenty two (22) video channels and shall have a 2-way communication capability. The company shall meet the minimum technical standards for operation and signal quality prescribed pursuant to 47 U.S.C. 544 (e). (Ord. 1707, 6-17-99)

(E) The company shall provide continuous service to all subscribers in return for the payment of their fee. In the event the company fails to operate the system for five (5) days, the City shall have the right to operate the system until such time as a new operator is approved and shall be reimbursed for any costs or expenses incurred as a result of the company's failure to operate the system, unless such failure is on account of technical impossibility, acts of God, disaster, war or other such reasons beyond the company's control. Financial problems, misfeasance or malfeasance of the company or its employees shall be no excuse for failure to operate.

(G) The company shall provide service to customers who have installed their own cable television wiring as long as such wiring and facilities are installed in compliance with the specifications and standards of the company. Connection charges in such event will be adjusted appropriately.

(H) The company shall temporarily move or relocate any of its lines, cables or other facilities when necessary for construction, moving a building or otherwise, if the expense of such operation will be paid by the person requesting it.

Our franchise contains the following reasonable build schedule for the cable operator:

#### **9-9-13: SERVICE AREA AND LINE EXTENSIONS**

(B) The company shall not be required initially to serve any customers or area for which it requested authority not to serve in its initial application if the City Council as part of the application review finds that service to any such area or customer was technically infeasible or economically unjustifiable.

(C) Following initial construction and activation of the system, service shall be extended, at the Company's expense, within ninety (90) days from the date of a request, to any person within the City limits

requesting service, including persons owning new construction, or subsequently annexed, provided that the Company is able to secure all rights-of-way necessary to extend service to such person within the ninety (90) day period on reasonable terms and conditions, if any of the following criteria are met:

(1) The building for which service is requested is within fifty feet (50') of a building which is receiving CATV service from the company.

(2) Service is requested from ten (10) or more subscribers who are located in proximity to an existing trunk cable in a density greater than ten (10) customers per one thousand three hundred twenty feet (1,320) of cable required to be extended within a public right-of-way to be able to serve such subscribers. (Ord. 1707, 6-17-99)

(D) Whenever any person is willing to pay the costs of extending the system to serve such person, the Company shall provide such person with service within ninety (90) days from the date that such costs are paid to the Company, provided that the Company is able to secure all rights-of-way necessary to extend service to such person within such ninety (90) day period on reasonable terms and conditions. (Ord. 1707, 6-17-99)

Our franchise requires that the cable operator currently provide service to the following areas of our community:

### **9-9-13: SERVICE AREA AND LINE EXTENSIONS**

(A) The company shall be required to provide service to all persons within the City limits of Montrose desiring service, subject to the exceptions of this Section.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

### **9-9-14: MINIMUM SERVICE AND OPERATION REQUIREMENTS**

(F) The company shall to the extent economically feasible, take advantage of new technical developments in the field of transmission of television or radio signals which would afford the company the opportunity to be more efficient and to provide better service, and shall as

far as reasonably practical, maintain the current state of the art with regard to cable television systems.

Our franchise ordinance contains a "level playing field" provision that states the following:

**9-9-2: PERMIT REQUIRED**

(B) Any CATV system permit issued hereunder shall be nonexclusive and other CATV system permits may be issued by the City, in its sole discretion, provided, however, that no permit or any component thereof shall be granted on terms materially less burdensome or more favorable than any other permit granted hereunder. (Ord. 1707, 6-17-99)

Our franchise contains the following insurance and bonding requirements:

**9-9-12: INSURANCE AND LIABILITY**

(A) The company shall fully indemnify, defend and hold harmless the City and its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities, and judgment for damages, including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith, in anyway arising out of or through the acts or commissions of the company, its agents or employees, or the company's cable television operations under the CATV system permit. This shall include any liability with regard to a claim for a violation of any law, including civil rights or anti-trust claims, and any litigation contesting the validity of this Chapter or the permit granted hereunder.

(B) The company shall maintain throughout the terms of the permit, liability insurance insuring the City and the company in amounts equal to or exceeding the current limits of the liability of the City under the Governmental Immunity Act. Certificates of the insurance shall be filed with the City for each policy containing an endorsement that it cannot be cancelled unless thirty (30) days written notice of cancellation is provided to the City. The company shall also maintain adequate fire and casualty insurance.

(C) By acceptance of the grant of any permit pursuant to this Chapter, the company covenants and agrees that it will not at anytime or in any manner or proceeding set up against the City any claim or

proceeding challenging this Chapter or the grant of the permit pursuant to this Chapter as being invalid for any reason.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

#### **9-9-9: USE OF STREETS, ALLEYS AND EASEMENTS**

(A) Any permit issued under this Chapter gives the company the right to use City owned streets and alleys, and those easements owned by the City, which, by their terms may be used for cable television facilities. Such use shall allow the installation and maintenance of wires, conduits, cables, poles and other appurtenant facilities used in the distribution and transmission of cable television. Such use shall be subject to the conditions of this Section. Nothing herein shall limit the City's rights to vacate, sell or encumber any City owned property.

(B) The location of the lines and other facilities shall be designed to minimize interference with other uses of the City streets, alleys and easements. The company shall use the poles of the telephone company or power company whenever possible for its lines subject to the requirements of this Section for undergrounding. The Company shall not erect poles of its own unless power or telephone poles are unavailable and the city determines that undergrounding is technically infeasible or economically too costly.

(C) The Company shall submit to the City prior to construction, plans showing the location of all proposed lines and facilities to be installed in City streets, alleys or easements. No such facilities or lines may be installed therein until the location has been approved by the City.

(D) The City may require that any lines or other facilities be protected, supported, raised, lowered, temporarily disconnected, modified, relocated or removed from the rights-of-way or other City property for public purposes. The Company, at the Company's expense, shall perform such work; provided, however, if the Company is unable to perform such work within a reasonable time, the City may perform or may cause the work to be performed at the Company's expense. The City shall provide reasonable advance notice to the Company, not to be less than five (5) business days, except in emergency situations. When public funds are utilized for the purposes of utility relocation, the City shall utilize said

funds for Company utility relocations in a manner consistent with other utility relocations. (Ord. 1740, 06-22-2000)

(E) No excavation may be made in any City street, alley or easement without obtaining a permit from the City in compliance with the provisions of the City's Excavation Permit Ordinance. The company, at its expense, shall repair any damages or disturbance to any public streets, alleys or easements or pavement, sidewalk or improvement thereon caused by the company's operations.

(F) The Company shall furnish updated copies of strand and trench mapping of all cable lines to the City, and when available, provide the same data in digital format acceptable to the City. (Ord. 1740, 06-22-2000)

(G) All cables and lines shall be constructed underground when required by City subdivision regulations or when located in areas where the power or telephone lines are underground.

(H) The company shall convert any of its overhead lines to underground lines upon the request of any person willing to pay for the cost of such conversion, or if the costs are paid in accordance with provisions of C.R.S. 29-8-101 et. seq., the Colorado Underground Conversion of Utilities Act.

(I) In the event that an overhead cable route is eliminated because of inability to continue the use of the poles of the telephone or power company, the company shall underground its lines and facilities if the other utility is undergrounding its lines and facilities. If such is not the case, then the company may install its own overhead pole lines if the City determines that undergrounding is technically infeasible or too expensive. (Ord. 1104, 1980)

(J) The City shall have the right to install and maintain, free of charge, within the underground pipes and conduits of the Company, any wire and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing or future operations of the Company. (Ord. 1707, 6-17-99)

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

**9-9-7: PERMIT REVOKED**

(A) Any permit issued under this Chapter may be revoked by the City Council if it determines that the Company has failed to comply with any provision of this Chapter or the permit, or is in violation of any applicable provision of any Federal, State or local law, rule, regulation, ordinance, Federal Communications Commission Orders, or Federal technical standards and the Company fails to remedy the situation as provided in this Section. (Ord. 1707, 6-17-99)

(B) The City shall provide the company with at least ten (10) days notice of the hearing on the alleged failure or violation during which time the company may remedy the situation. If the Council determines following the hearing that the grounds specified in subsection (A) above exist, it shall set a reasonable time period in which the company may remedy the situation. If the company fails to remedy the situation in such period, the Council may revoke the permit or take such other action as it deems appropriate.

#### **9-9-8: ACQUISITION OF THE SYSTEM BY THE CITY OR REMOVAL**

(A) If the Company shall cease operations or abandon its system during the term of the Permit, or if a renewal or extension of the Company's Permit is denied or the Permit is revoked, the City may acquire ownership of the Cable System in accordance with applicable law. If the Company shall cease operations or abandon its system during the term of the permit, the City may acquire the system for the net book value thereof to the extent allowable by law. If the permit is revoked by the City Council, the City may acquire the system for its fair market value as a going concern as if the Company's permit had a remaining term of five (5) years. In the event of a renewal of a franchise is denied and the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise permit itself. (Ord 1740, 06-22-2000)

(B) The City shall not be liable for severance damages on account of portions of the company's system located outside of the City limits which will be severed because of the purchase by the City, however, the City will, upon request of the company, purchase such severed portions of the system located outside the City on the same terms as it may purchase the system within the City.



(C) In the event of termination of a permit without renewal, or revocation of the permit, if the City does not elect to acquire the system in accordance with the procedures outlined in subsection (A) above, the City may require the company to remove all of its cables, lines and facilities from City streets, alleys and easements within a period of six (6) months, repairing and restoring any damage caused thereby. If the company fails to remove such components within that period they shall become the property of the City.

(D) The provisions of this Section are alternatives to the City's power of eminent domain which power is expressly reserved.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

#### **9-9-14: MINIMUM SERVICE AND OPERATION REQUIREMENTS**

(B) The company shall at all times comply with the regulations and laws of the State and the United States and any of its agencies.

(C) Construction and the operation of the system shall be consistent with generally accepted engineering practices and shall comply with the City's Building and Electrical Codes, all applicable sections of the Occupational Safety and Health Act of 1970, as amended, all applicable rules and regulations of the Federal Aviation Administration, and all other applicable local, State and Federal law and regulations. (Ord. 1707, 6-17-99).

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance:

**9-9-2: PERMIT REQUIRED**

(C) No CATV system permit shall be granted until the City Council determines that:

- (1) The applicant, its proposed system and operation are financially viable.
- (2) The applicant has the technical ability and necessary experience to successfully operate a CATV system.
- (3) The applicant and its principals are of good moral character.
- (4) The applicant is proposing to design, construct and maintain its system so as to have the capability to serve every dwelling unit within the City limits, including areas annexed for the term of its permit, subject to any line extension requirements and excavation requirements by the City in accordance with the provisions herein. (Ord. 1707, 6-17-99)
- (5) All requirements of this Chapter and other applicable requirements of law have been and will be complied with.
- (6) The City Council shall consider the requirements of applicable law and specific local considerations, including, but not limited to the following:
  - (a) The capacity of the public rights-of-way to accommodate multiple coaxial cables and fiber optics, in addition to the cables, conduits, and pipes of other utility systems, such as electrical power, telephone, gas and sewerage; and
  - (b) The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' properties, and the disruption arising from numerous excavations of the rights-of-way. (Ord. 1707, 6-17-99)

(D) Upon receipt of an application for a permit or renewal thereof, the City Council may conduct such investigation and hold such hearings as it deems necessary and proper to determine if the criteria of this Section have been met. Reasonable notice of any hearings scheduled shall be given to the applicant. (Ord. 1104, 1980)

## Competitive Cable Systems

Our community

- has never been approached by a competitive provider to provide service.
- has not denied any provider the opportunity to serve in our community.
- does not have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

## Conclusions

The local cable franchising process functions well in City of Montrose. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Montrose therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Montrose

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